HON'BLE SHRI G.S.SINGHVI, THE CHIEF JUSTICE
AND
HON'BLE SHRI JUSTICE C.V.NAGARNUNA REDDY

WRIT PETITION No.3751 OF 2007

Between:

The Govt of A.P.,
Rep. by Prl.Secretary,
Transport Department,
Secretariat, Hyderabad
And two others.

… Petitioners

AND

B.Venkateswara Rao

… Respondent

:: ORDER ::

Counsel for the petitioners : Government Pleader for Services-II

Counsel for the respondent : Shri M.Panduranga Rao

Dated: 30.04.2007

Per C.V.Nagarjuna Reddy, J

This petition is directed against order dated 19.1.2007 passed by the Andhra Pradesh Administrative Tribunal (for short 'the Tribunal') in O.A.No.6776 of 2006 whereby the petitioners have been ordered to reinstate the respondent pending departmental enquiry.

The respondent is a Junior Assistant in the office of Regional Transport Officer, Rajamundry, East Godavari District. He was entrusted with the duty of issuing fresh driving licences, international driving permits, non-transport driving licences, renewals and maintenance of stationery and record keeping. On 31-5-2005, Regional Transport Officer, Rajahmundry received a telephonic complaint that the respondent has committed financial irregularities with the aid of computers installed in the office. As a follow-up action, the Transport Commissioner (petitioner No.2) deputed a team of software personnel to verify the records. The investigation conducted by the software team revealed that the allegation levelled against the respondent was correct. Thereafter, the respondent was placed under suspension and an enquiry was initiated against him vide Memo dated 23-7-2005 on the following charge:

> "that Sri B.Venkateswara Rao, Junior Assistant (under suspension) while functioning as Junior Assistant in the Office of the Regional Transport Officer, Rajahmundry has committed grave irregularities by not accounting the transaction fees and service charges to Government account, amounting to Rs.13,76,835-00 collected by him from the applicants during the period from 29.8.2002 to 29.6.2005 and causing heavy loss of revenue to State Exchequer and thereby failed to display devotion to duty in violation of Conduct Rule 30 of the APCS

Conduct Rules, 1964."

The respondent submitted reply dated 12.8.2005 and denied the allegation. Deputy Transport Commissioner, Kakinada (petitioner No.3) did not feel satisfied with the explanation of the respondent and issued proceedings dated 23.9.2005 for appointment of an enquiry officer.

After about one year and three months of his suspension, the respondent filed O.A.No.6776 of 2006 before the Andhra Pradesh Administrative Tribunal, Hyderabad (for short, 'the Tribunal') and prayed for quashing of order dated 3-7-2005 issued by petitioner No.3. He pleaded that the charge framed against him was unfounded; that his suspension had not been reviewed as required by the policy instructions issued by the government and that the enquiry was being prolonged without any justification.

In the counter affidavit filed by him, Shri P. Srinivas, Joint Transport Commissioner and Secretary, State Transport Authority, Hyderabad (petitioner No.2) averred that the verification of database maintained by the respondent revealed commission of grave irregularities by him, which resulted in pecuniary loss to the State to the tune of Rs.13,76,835/-. He further averred that the enquiry officer had already submitted report and the file is under process for passing final orders in departmental proceedings.

Shri P. Srinivas defended the suspension of the respondent by asserting that the preliminary investigation conducted by the Information and Technology professionals revealed large scale misappropriation of the government money.

The Tribunal vide its order dated 19.1.2007 allowed the O.A. and directed the petitioners to reinstate the respondent without prejudice to the pending disciplinary proceedings. The learned Judicial Member of

the Tribunal opined that prolonged suspension of the applicant (the respondent herein) was not justified.

Learned Government Pleader argued that the order under challenge is liable to be set aside because, while directing reinstatement of the respondent, the Tribunal overlooked that he has been charged with the allegation of misappropriation of public funds and the fact that the enquiry is at the final stage.

Shri M. Panduranga Rao supported the order under challenge and argued that the Tribunal did not commit any illegality by ordering reinstatement of the respondent because the departmental enquiry has been unduly prolonged and the concerned authority did not review the respondent's suspension after six months.

We have given thoughtful consideration to the rival contentions. From the charge, which is extracted hereinabove, it is quite evident that the respondent is accused of grave misconduct involving serious financial irregularities and resultant loss to the public exchequer. In **Khem Chand v. Union of India**[1], a Constitution Bench of the Supreme Court held that nobody can seriously doubt the importance and necessity of proper disciplinary action against government servants for inefficiency, dishonesty or other appropriate reasons and that suspension of government servant pending such departmental action is absolutely necessary in the interest of general public for serving whose interest the government machinery exists and functions. It was further held that suspension is a necessary part of the procedure for taking disciplinary action against a government servant.

In **R.P.Kapur v. Union of India**[2], another Constitution Bench of the Supreme Court held that the purpose of suspension pending enquiry is generally to facilitate the departmental enquiry and to

ensure that in the course of enquiry the public servant is not in a position to misuse his authority in the same way in which he might have been charged to have done so in the enquiry.

In **State of Orissa v. Bimal Kumar Mohanty**[3], the Supreme Court held that suspension pending enquiry is not a punishment but is only one of forbidding or disabling an employee to discharge the duties of office or post held by him and that it is to refrain him to avail further opportunity to perpetrate the alleged misconduct or to remove the impression among the members of service that dereliction of duty would pay fruits and the offending employee could get away even pending enquiry without any impediment or to prevent an opportunity to the delinquent officer to scuttle the enquiry or investigation or to winover the witnesses. It was further held that each case must be considered depending on the nature of the allegations, gravity of the situation and the indelible impact it creates on the service for the continuance of the delinquent employee in service pending enquiry.

If the present case is examined in the light of the propositions of law laid down in the aforementioned judgments, it becomes clear that the Tribunal committed a serious illegality by ordering reinstatement of the respondent only on the ground of non-completion of departmental enquiry. Unfortunately, while ordering reinstatement of the respondent, the Tribunal overlooked three most important factors, namely, i) that the respondent is facing a very serious charge involving misappropriation of huge public money, ii) that the enquiry officer had already submitted report, and iii) that in a case where a public servant is accused of indulging in corruption, the loss which the State suffers by continuing him in the office will outweigh the loss incurred by payment of subsistence allowance during the period of suspension.

Another patent error committed by the Tribunal relates to

miscalculation of time which had elapsed between the date of initiation of enquiry and disposal of the application filed by the respondent. As on the date of disposal of the O.A., about one year and six months had elapsed, but the Tribunal proceeded under a mistaken impression that the proceedings have not been completed in two years time.

There is another reason for not sustaining the order of the Tribunal. Undisputedly, the enquiry initiated against the respondent is at the final stage inasmuch as the enquiry officer has submitted report with the finding that the respondent is guilty of the charge and the matter is pending before the competent authority for necessary orders. In this scenario, reinstatement of the respondent will be highly detrimental to public interest.

For the reasons stated above, the writ petition is allowed. The order passed by the Tribunal in O.A.No.6776 of 2006 is set aside and the application is dismissed.

As a sequel to allowing of the writ petition, W.P.M.P.No.4794 of 2007 filed by the appellants for interim relief is disposed of as infructuous.

C.V.NNAGARJUNA REDDY, J

G.S.SINGHVI, CJ

Date: 30.04.2007
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[1] AIR 1963 SC 687
[2] AIR 1964 SC 787
[3] (1994) 4 SCC 126